

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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In the Matter of)
)
Policies and Rules Pertaining) RM-8179
to the Regulation of Cellular)
Carriers)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits its comments in the above-referenced proceeding. USTA is the principal trade association of the exchange carrier industry. Its members provide over 98 percent of the exchange carrier-provided access in the U. S. The USTA interest represented herein is that of exchange carriers alone.

In a Request for Declaratory Ruling and Petition for Rulemaking (Petition) filed January 29, 1993, the Cellular Telecommunications Industry Association is seeking regulatory relief pursuant to the decision of the United States Court of Appeals for the District of Columbia Circuit in AT&T v. FCC.¹ Specifically, the Petition requests that cellular carriers not be required to file federal tariffs under Section 221(b) of the Communications Act; that cellular carriers be recognized to be connecting carriers and, therefore, be found exempt from federal

¹AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), rehearing en banc denied, January 21, 1993.

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tariff filing requirements; that cellular carriers be declared non-dominant; and that the tariff filing requirements applicable to cellular carriers be simplified.

USTA takes no position at this time as to whether Section 221(b) or Section 2(b)(2) of the Communications Act provides any basis for treating cellular service differently from other services. Cellular carriers must bear the burden of showing that such sections are applicable.²

USTA believes that any determinations made by the Commission regarding the remaining requests would be premature. It is by no means clear that selective forbearance in a market is in the public interest. The only means to achieve the policy benefits that forbearance was intended to promote is to treat all competitors equally in a market where competition exists. Continued pervasive regulation of one group of competitors in the face of other, essentially unregulated competitors can only serve to introduce a host of distortions in the market and deliver anticompetitive results.

²See, Petition of the Continental Telephone Company of Virginia for a Declaratory Ruling that it is not Fully Subject to the Commission's Jurisdiction Under the Communications Act of 1934, Memorandum Opinion and Order, FCC 88-360, released December 1, 1988. (Commission affirmed a Common Carrier Bureau Order which determined that Continental was not a connecting carrier because it was engaged in the provision of interstate service through a physical connection with Contel ASC, an interstate carrier that was also a wholly-owned subsidiary of Contel). The Commission stated that "it is well established that a carrier claiming an exemption from our jurisdiction bears the burden of demonstrating that it qualifies for the exemption". (at ¶ 13).

The Commission has stated that competition in the interstate access market already exists,³ and the Commission is taking further steps to ensure that competition increases.⁴ As the access marketplace continues to become more competitive, the Commission should be seeking to adjust the regulatory requirements for all carriers based on the competitiveness of the marketplace.⁵ As competition increases, the level of regulation should be reduced equally for all competitors. The days of end-to-end connectivity for anyone within a single network operated by a single company are over. The nationwide public switched telephone network is evolving into a network of networks in which virtually every component will be competitively provided. Regulation must be designed to accommodate this change and to assure that the carriers on whom a significant proportion of customers depend, exchange carriers, can compete to the same extent as any other provider in delivering new services and network capabilities.

³Transport Rate Structure and Pricing, CC Docket No. 91-213, Report and Order and Furthe Notice of Proposed Rulemaking, released October 16, 1992 at ¶ 105.

⁴Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, released October 19, 1992.

⁵"[I]f we can design a regulatory system for these carriers' access business that mirrors the efficiency incentives found in competitive markets, we will have put into place a system that will go a long way toward making the LECs stronger, more productive competitors for all the markets in which they must operate". Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6790 at ¶ 33.

The Commission's procompetitive policies must not promote competitors, they must encourage the development of fair competition. The Commission should focus on matching the degree of regulation governing a market area to the competitiveness of that area. Regulation should not depend upon whether access is provided over a wireless or wired path, except where the Act mandates it.

Many states have rejected forbearance in favor of a consistent and common regulatory scheme for all carriers based on the competitive nature of the services provided. Instead of attempting to manage markets and service providers, the Commission should institute regulation which accommodates the dynamics of markets and technology and then reduce the level of regulation for all market participants as competition increases.

The Commission has the opportunity to pursue the evenhanded regulatory treatment suggested by USTA in several pending proceedings. This is why any action taken pursuant to this Petition would be premature. In GEN Docket No. 90-314, for example, the Commission's intention is to foster a market environment for the provision of personal communications services (PCS) in which cellular and PCS licensees compete with a variety of telecommunications services, including cellular.⁶ The

⁶Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, ET Docket No. 92-100, Notice of Proposed Rulemaking and Tentative

Commission suggests that PCS may become a full fledged competitor to wireline services.⁷ In this market, it seems likely that services will be increasingly competitive. Such services should be regulated in an equivalent manner, regardless of the service provider. PCS is a new family of services. No provider should enjoy a regulatory advantage in developing and deploying PCS. The marketplace should be the ultimate arbiter of who provides service and the particular services which are deployed. Granting the Petition could prejudice the outcome of this proceeding.

In addition, the Commission is currently considering what tariff filing requirements should be applied to all so-called non-dominant carriers.⁸ Again, any action taken pursuant to this Petition could prejudice that proceeding as well.

The Commission should undertake a comprehensive review of its access rules and institute a regulatory scheme which will

Decision, released August 14, 1992 at ¶ 70.

⁷Id. at ¶ 71. In 1992, the number of new wireless subscribers in the U. S. outpaced the number of new wireline subscribers. Wireless revenues, including cellular, cordless and paging, is expected to reach \$30 billion by the middle of this decade. Initial PCS deployment is expected to attract some 80,000 subscribers in 1994, and grow to 7.2 million by the year 2,000. See, Telephone Engineer & Management, March 1, 1993 at pp. 35-37.

⁸Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Notice of Proposed Rulemaking, released February 19, 1993.

better accommodate today's competitive environment.⁹ The Commission should not continue its current ad hoc approach which only serves to confer unearned competitive advantages on certain service providers.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By

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